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HOUSE BILL 243

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING A COURT WITH  
AUTHORITY TO DEPART FROM THE IMPOSITION OF A MANDATORY SENTENCE  
FOR A HABITUAL OFFENDER; AMENDING A SECTION OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-18-17 NMSA 1978 (being Laws 1977,  
Chapter 216, Section 6, as amended) is amended to read:

"31-18-17. HABITUAL OFFENDERS--ALTERATION OF BASIC  
SENTENCE. --

A. ~~[Any]~~ A person convicted of a noncapital felony  
in this state, whether within the Criminal Code or the  
Controlled Substances Act or not, who has incurred one prior  
felony conviction that was part of a separate transaction or  
occurrence or conditional discharge under Section 31-20-13 NMSA  
1978 is a habitual offender and his basic sentence shall be

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1 increased by one year. The sentence imposed pursuant to this  
2 subsection shall not be suspended or deferred, unless the court  
3 makes a specific finding that [~~the prior felony conviction and~~  
4 ~~the instant felony conviction are both for nonviolent felony~~  
5 ~~offenses and that~~] justice will not be served by imposing a  
6 mandatory sentence of imprisonment and that there are  
7 substantial and compelling reasons, stated on the record, for  
8 departing from the sentence imposed pursuant to this  
9 subsection.

10 B. [~~Any~~] A person convicted of a noncapital felony  
11 in this state, whether within the Criminal Code or the  
12 Controlled Substances Act or not, who has incurred two prior  
13 felony convictions that were parts of separate transactions or  
14 occurrences or conditional discharge under Section 31-20-13  
15 NMSA 1978 is a habitual offender and his basic sentence shall  
16 be increased by four years [~~and the sentence imposed by this~~  
17 ~~subsection shall not be suspended or deferred~~]. The sentence  
18 imposed pursuant to this subsection shall not be suspended or  
19 deferred, unless the court makes a specific finding that  
20 justice will not be served by imposing a mandatory sentence of  
21 imprisonment and that there are substantial and compelling  
22 reasons, stated on the record, for departing from the sentence  
23 imposed pursuant to this subsection.

24 C. [~~Any~~] A person convicted of a noncapital felony  
25 in this state, whether within the Criminal Code or the

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1 Controlled Substances Act or not, who has incurred three or  
2 more prior felony convictions that were parts of separate  
3 transactions or occurrences or conditional discharge under  
4 Section 31-20-13 NMSA 1978 is a habitual offender and his basic  
5 sentence shall be increased by eight years [~~and the sentence~~  
6 ~~imposed by this subsection shall not be suspended or deferred~~].  
7 The sentence imposed pursuant to this subsection shall not be  
8 suspended or deferred, unless the court makes a specific  
9 finding that justice will not be served by imposing a mandatory  
10 sentence of imprisonment and that there are substantial and  
11 compelling reasons, stated on the record, for departing from  
12 the sentence imposed pursuant to this subsection.

13 D. As used in this section, "prior felony  
14 conviction" means:

15 (1) a conviction [~~when less than ten years~~  
16 ~~have passed prior to the instant felony conviction since the~~  
17 ~~person completed serving his sentence or period of probation or~~  
18 ~~parole for the prior felony, whichever is later]~~ for a prior  
19 felony committed within New Mexico whether within the Criminal  
20 Code or not; or

21 (2) [~~any~~] a prior felony [~~when less than ten~~  
22 ~~years have passed prior to the instant felony conviction since~~  
23 ~~the person completed serving his sentence or period of~~  
24 ~~probation or parole for the prior felony, whichever is later]~~  
25 for which the person was convicted other than an offense

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1 triable by court martial if:

2 (a) the conviction was rendered by a  
3 court of another state, the United States, a territory of the  
4 United States or the commonwealth of Puerto Rico;

5 (b) the offense was punishable, at the  
6 time of conviction, by death or a maximum term of imprisonment  
7 of more than one year; or

8 (c) the offense would have been  
9 classified as a felony in this state at the time of conviction.

10 [~~E. As used in this section, "nonviolent felony~~  
11 ~~offense" means application of force, threatened use of force or~~  
12 ~~a deadly weapon was not used by the offender in the commission~~  
13 ~~of the offense.] "~~

14 Section 2. EFFECTIVE DATE. ---The effective date of the  
15 provisions of this act is July 1, 2003.

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